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KENNETH J. MURPHY
CLERK

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
(WESTERN DIVISION)

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U.S. DISTRICT COURT
SOUTHERN DIST OHIO
WEST DIV CINCINNATI

UNITED STATES OF AMERICA,

Plaintiff,

v.

ARISTECH CHEMICAL
CORPORATION,

Defendant.

Civil No.
Hon.

C-1-01-772

4819

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CMTC

(m)

CONSENT DECREE

WHEREAS, Plaintiff, the United States of America ("United States"), by authority of the Attorney General of the United States, acting at the request of the Administrator of the Environmental Protection Agency ("U.S. EPA"), has filed a Complaint in this action, pursuant to Section 113 of the Clean Air Act ("CAA"), 42 U.S.C. 7413, seeking civil penalties and injunctive relief for alleged violations by Defendant Aristech Chemical Corporation ("Aristech") at its Ironton, Ohio facility of the following environmental laws and regulations: 1) Part C of the CAA, 42 U.S.C. §§ 7470-7492, and the regulations promulgated thereunder governing the prevention of significant deterioration of air quality ("PSD regulations"), which are set forth at 40 C.F.R. § 52.21 et seq. and have been incorporated into the Ohio

State Implementation Plan ("SIP") at 40 C.F.R. § 52.1884(b); 2) the federally approved Ohio SIP; and 3) Section 112 of the CAA, 42 U.S.C. § 7412, the National Emission Standards for Hazardous Air Pollutants for the Synthetic Organic Chemical Manufacturing Industry ("SOCMI"), promulgated as subparts F, G, H and I in 40 C.F.R. Part 63, commonly referred to as the hazardous organic NESHAP or the HON. Plaintiff alleges that violations of the aforementioned laws and underlying regulations have occurred and continue to occur at Aristech's facility located at Route 52 and Ohio Furnace Road in Ironton, Ohio;

WHEREAS, the Complaint alleges, in part, that Aristech has failed to obtain air permits required for the operation of sources of air pollution at the Ironton facility, as required by the PSD requirements and the Ohio State Implementation Plan for the construction and operation of the following sources of air pollution at Aristech's Ironton facility: the Phenol II Unit, and the Cumene Oxidation Unit (hereinafter, "1986 Phenol Expansion Project");

Whereas, on or about February 26, 1992, Aristech received a permit to install a thermal oxidizer to reduce VOC emissions from five separate vent streams in the Cumene Oxidation and Phenol II Process Units. Aristech contends that the thermal oxidizer which it installed in 1992 achieves a 99% destruction efficiency for VOCs. Aristech further contends that the thermal

oxidizer represents the Best Available Control Technology ("BACT").

WHEREAS, on November 10, 2000, Aristech has submitted an application for a construction permit to the State of Ohio, Application No. 07-00500, pursuant to the PSD program and SIP requirements, related to the 1986 Phenol Expansion Project;

WHEREAS, the United States Complaint alleges that Aristech has violated the following HON regulations: 1) that Aristech's B-10 Reactor Feed Furnace in its Aniline Production Unit failed to either: (1) reduce emissions of organic hazardous air pollutants by using a flare; or (2) reduce total hazardous air pollutants by 98% weight or to a concentration of less than 20 parts per million by volume (whichever is less stringent); or (3) achieve and maintain a TRE index value of greater than 1.0 at the outlet of the final recovery device, in violation of 40 C.F.R. § 63.113(a), for the time period of April 22, 1997 through June 2, 1998; 2) that during the period April 22, 1997 through August 4, 1999, Aristech failed to install on the ammonia-chilled condenser in its Phenol I Production Unit either an organic monitoring device equipped with a continuous recorder, or a condenser exit (product side) temperature monitor equipped with a continuous recorder, in violation of 40 C.F.R. § 63.114(b); 3) that Aristech failed to keep required temperature records, from April 22, 1997 through August 4, 1999, for its ammonia-chilled condenser used to control process vents 304-F,

307-F, and 325-F, in violation of 40 C.F.R. § 63.118(b); 4) that Aristech failed to correctly calculate the Total Resource Effectiveness Index Value ("TRE") for process vents 304-F, 307-F and 325-F, in the Phenol I Production Unit, by conducting the required measurements and calculations set forth at 40 C.F.R. § 63.115(d)(2); 5) that from September 19, 1997 through August 30, 1999, Aristech failed to conduct a performance test of its thermal oxidizer, 2007-L, for the Cumene Oxidation Unit, in compliance with Method 18, 40 C.F.R. Part 60, Appendix A and 40 C.F.R. § 63.7(e)(3), in violation of 40 C.F.R. § 63.116(c); and 6) that during the period September 19, 1997 through April 13, 1998, Aristech failed to submit a Notification of Compliance status as required by 40 C.F.R. § 63.152(b).

WHEREAS, Aristech has certified and U.S. EPA has determined that Aristech is currently in compliance with the HON regulations referenced in the previous whereas clause;

WHEREAS, the United States and Aristech agree, and this Court finds, that this Consent Decree has been negotiated by the parties in good faith, that implementation of this Consent Decree is likely to avoid or limit prolonged and complicated litigation between the parties, and that this Consent Decree is fair, reasonable, and in the public interest;

WHEREAS, settlement and entry of this Consent Decree does not constitute admission or acknowledgment of liability by Aristech, nor does it constitute adjudication by the Court of any

issue or fact or law, but is intended solely to settle all claims alleged by the United States on the terms set forth herein;

NOW THEREFORE, before the taking of any testimony upon the pleadings and upon consent and agreement of the United States and Aristech, and the Court having considered the matter and being duly advised,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

I. JURISDICTION AND VENUE

1. The parties agree and consent that this Court has jurisdiction over the parties and the subject matter of this action under section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b).

2. Venue is proper in this judicial district pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. § 7413(b), and 28 U.S.C. § 1391(b) and (c), because the alleged violations that are the subject of this action occurred and continue to occur in this judicial district.

II. DEFINITIONS

3. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

4. "Defendant" shall mean the Aristech Chemical Corporation ("Aristech").

5. "Entry" or "entered," when used in reference to

this Consent Decree, refers to the entry of this Consent Decree by the Court after satisfaction of the public notice and comment procedures of Section XVII of this Consent Decree.

6. "U.S. EPA" or "EPA" shall mean the United States Environmental Protection Agency.

7. "Notify," "submit," and other terms signifying an obligation to transmit or communicate documents and information shall mean to deliver in person, deposit in the United States mail, or dispatch by express courier not later than the day that such transmission or communication is required by the Consent Decree. Should such day be a weekend day or a federal or state holiday, the delivery, deposit, or dispatch shall be due on the next business day.

8. "Paragraph" shall mean a portion of this Partial Consent Decree identified by an Arabic numeral, a letter of the alphabet or a lower case Roman numeral.

9. "Parties" shall mean the United States and Aristech Chemical Corporation.

10. "Plaintiff" shall mean the United States.

11. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral and includes one or more paragraphs, unless used to refer to a statutory or regulatory section.

12. "State of Ohio" shall mean the State of Ohio and the Ohio Environmental Protection Agency ("OEPA").

13. "United States" shall mean the United States of America.

14. Except as otherwise set forth herein, terms used in this Consent Decree that are defined in Section 169 of the Clean Air Act, 42 U.S.C. § 7479, or in 40 C.F.R. §§ 52.21 shall have the meaning contained therein. References to the Clean Air Act and the PSD regulations in this Consent Decree shall also include any amendments thereto.

III. APPLICATION AND SCOPE

15. The requirements of this Consent Decree apply to and are binding upon the Defendant and its successors and assigns. Any change in ownership or corporate or other legal status of the Defendant, including but not limited to, any transfer of all or substantially all of the assets or real or personal property of the Defendant, shall in no way alter the Defendant's responsibilities under this Consent Decree. Defendant shall be responsible for ensuring that its officers, directors, agents, servants, contractors, subcontractors, and employees comply with the requirements of this Consent Decree.

IV. COMPLIANCE PROGRAM

16. Aristech agrees to, and is hereby ordered, to undertake the actions set forth below to achieve and/or maintain compliance with the Act, the PSD and the HON regulations at its Iron-ton facility:

- a. with respect to the PSD permit submitted by Aristech on November 10, 2000 related to the 1986 Phenol Expansion Project, Aristech shall respond to any inquiries or requests for information on the PSD permit that OEPA may have, if any, in a prompt and responsive manner;
- b. immediately upon issuance of the PSD permit by OEPA for the 1986 Phenol Expansion Project, comply with the terms and conditions set forth in the PSD permit; and
- c. with respect to the HON violations alleged in the Complaint, maintain compliance with the limits set forth in 40 C.F.R. Part 63, Subparts F, G, and H.

Unless additional control technology is required by OEPA in the PSD permit issued for the 1986 Phenol Expansion Project, this Consent Decree does not require installation of additional pollution control technology for the 1986 Phenol Expansion Project to meet requirements under the PSD regulations. Nothing in this Consent Decree shall be interpreted as relieving Aristech of its responsibility to comply with the terms and conditions of its PSD permit, including, but not limited to, the installation of additional air pollution control technology.

17. Quarterly Reporting Aristech shall provide quarterly progress reports to U.S. EPA, Region 5. Aristech shall submit the first quarterly report for the partial calendar

quarter which begins with the day of the lodging of this Consent Decree with the Court, within 45 days after the close of that quarter. Subsequent reports shall be mailed by Aristech no later than 30 days after the close of the preceding calendar quarter (i.e., April 30, July 31, October 31, & January 31). Aristech has the option of submitting two of its quarterly reports together with the HON semiannual reports. Each quarterly report shall include, but not be limited to:

- a. A statement of compliance or noncompliance with each requirement of this consent decree, and the PSD permit issued for the 1986 Phenol expansion project, the reason(s) for any noncompliance, a plan for preventing such noncompliance in the future, a description of the specific actions taken by Aristech during the preceding quarter to meet the terms of the Consent Decree, and a projection of action(s) to be taken for the following quarter to comply with future Consent Decree requirements.
- b. Copies of tests and reports required by its PSD permit;
- c. A listing of all instances where sampling or analysis requirements were not accomplished as required in the PSD permit for the 1986 Phenol expansion project, as well as an explanation of the cause and any action taken to prevent recurrence.

Such quarterly reports shall be signed by an Aristech official involved in the implementation of the terms of the Decree that qualifies as a "responsible official" and certified by such official as follows:

"I certify under penalty of law that this document and any attachments were prepared under my direction or supervision in accordance with a system designed to assure qualified personnel properly gather and evaluate the information submitted. Based on my directions and my inquiry of the person(s) who manage(s) the system, or the person(s) directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete."

A "responsible official" for purposes of the certification required by this paragraph means a president, secretary, treasurer, vice-president of the corporation, plant manager, or any person who performs similar policy or decision-making functions for the corporation with respect to environmental matters.

V. CIVIL PENALTY

18. Within 30 days of entry of this Consent Decree, Aristech shall pay to the United States a civil penalty in the amount of \$450,000. Such payment shall be in full satisfaction of the United States' claims for a civil penalty against Aristech

for the violations alleged in the Complaint filed in this action through the date of lodging of this Consent Decree. Penalty payments made under this Consent Decree are not tax deductible.

19. Aristech's payment of the amount set forth for it in Paragraph 18 shall be made by Electronic Funds Transfer ("EFT" or wire transfer) to the United States Department of Justice ("DOJ") lock box bank, referencing DOJ No. 90-5-2-1-06701/1 and USAO File No. 2001V01595. Payment shall be made in accordance with the instructions provided by the United States. EFTs must be received at the DOJ lock box bank by 11:00 A.M. (eastern time) in order to be credited on that day. Defendant shall advise the Financial Litigation Unit of the United States Attorneys Office for the Southern District of Ohio at the time payment is being wire-transferred. A copy of the transmittal notice shall be mailed to each party identified in Section XV (Notices, Records, and Submissions) of this Consent Decree.

20. If the Defendant does not pay its civil penalty, as specified in Paragraph 18 of this Consent Decree, when due, then without further order of this Court, this Consent Decree shall be considered an enforceable judgment for purposes of post-judgment collection under Rule 69 of the Federal Rules of Civil Procedure and other applicable statutory authority.

21. Aristech shall pay interest, at the rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. § 3717, for any delinquent payment of a civil or

stipulated penalty. The rate shall be that in effect on the due date of the civil penalty provided for in Paragraph above and, in the case of stipulated penalties, at the time such payment(s) become due. Interest shall be computed beginning the date the penalty in question is due. If interest is due, the Defendant shall submit a statement with its payment to the Collections Unit of the U.S. Attorney's Office for the Southern District of Ohio, 2 Nationwide Plaza, 280 N. High St., 4th Floor, Columbus, Ohio 43215, setting forth its calculation of interest. The U.S. Attorney's Office will advise the Defendant in the event such calculation requires adjustment.

VI. STIPULATED PENALTIES

22. If the Defendant fails to comply with any provision of this Consent Decree, it shall pay stipulated penalties to the United States according to the provisions set forth below:

a. For failure to comply with the terms and conditions of its PSD permit issued for the 1986 Phenol expansion project pertaining to the installation of pollution control equipment, Defendant shall pay a stipulated penalty of \$1,500 per day for each day that it has not complied with the installation of pollution control equipment requirements of its PSD permit

b. For failure to comply with the terms and conditions of its PSD permit issued for the 1986 Phenol

expansion project pertaining to requirements relating to emission compliance testing, Aristech shall pay a stipulated penalty in the amount of \$1,500 per day for each of the first 60 days of violation of such term or condition and 3,000 per day for each succeeding day.

c. For failure to comply with any emissions limit contained in the PSD permit issued for the 1986 Phenol Expansion Project, Aristech shall pay a stipulated penalty in the amount of \$4,000 per day for each day that Aristech exceeds any limitation under the PSD permit for the Phenol expansion project.

d. For failure to submit any report required in Paragraph 17 by the required dates, Defendant shall pay a stipulated penalty in the amount of \$750 per day for each of the first 60 days that the Report is late and \$1,500 per day for each succeeding day;

e. For failure to pay the civil penalty within 30 days of entry of this Consent Decree per Paragraph 18, Defendant shall pay a stipulated penalty in the amount of \$1,000 per day for each of the first 30 days that the payment is late and \$2,000 per day for each succeeding day.

23. Stipulated penalties shall be paid within 30 days of written demand by U.S. EPA for such penalties, by cashier's or certified check made payable to "Treasurer, United States of America," and shall be sent to:

United States Attorney's Office
Southern District of Ohio
Attention: Collections
2 Nationwide Plaza, 280 N. High St., 4th Floor,
Columbus, Ohio 43215

24. Stipulated penalties shall accrue on the first business day after complete performance is due or the day on which a violation occurs. Stipulated penalties shall continue to accrue through the final day of correction of the noncompliance.

25. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

26. The payment of stipulated penalties shall not alter in any way the Defendant's obligations under this Consent Decree and nothing in this Consent Decree shall preclude the Plaintiff from seeking any additional legal or equitable relief, including, but not limited to, injunctive relief, civil penalties, and civil or criminal contempt sanctions, for any violation of the Clean Air Act other than those violations which are the subject of this action.

VII. EFFECT OF SETTLEMENT

27. Satisfaction of all of the requirements of this Consent Decree constitutes full settlement of, and shall resolve, all civil liability of Aristech to the Plaintiff for the claims alleged or facts described in the Complaint, or the Notices of Violation referred to in the Complaint, filed in this action.

28. Except as provided in Section VIII (Reservation of Rights), the Plaintiff covenants not to bring a civil action or civil administrative proceeding against Aristech under the Clean Air Act, for claims alleged in Complaint.

VIII. RESERVATION OF RIGHTS

29. The provisions of Section VII (Effect of Settlement) do not pertain to any matters other than those expressly specified in Section VII (Effect of Settlement). The Plaintiff reserves and this Consent Decree is without prejudice to all rights against Aristech with respect to all other matters, including but not limited to, claims based on a failure by Aristech to meet any requirements of this Consent Decree.

30. This Consent Decree is not and shall not be interpreted to be a permit, or a modification of an existing permit, issued pursuant to applicable requirements of the Clean Air Act, 42 U.S.C. §§ 7401 et seq. The issuance of this Consent Decree does not in any way relieve Aristech of its obligation to obtain a permit and comply with the requirements of a permit or with any other applicable Federal or State law or regulation. Any new permit, or modification of existing permits, must be complied with in accordance with applicable Federal and State laws and regulations. The pendency or outcome of any proceeding concerning the issuance, re-issuance, or modification of a permit shall neither affect nor postpone Aristech's duties and liabilities as set forth in this Consent Decree. This Consent

Decree is not intended to and shall not operate to require the adoption of any particular emission limit or condition in any permit. In the event that applicable law would require Aristech to implement other processes at the Ironton, Ohio facility, this Consent Decree is not a defense to or waiver of such a requirement.

31. Nothing in this Consent Decree shall limit the authority of the Plaintiff to take any action against Aristech in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment, or to limit application of Section 303 of the Clean Air Act, 42 U.S.C. § 7603; Section 504 of the Clean Water Act, 33 U.S.C. § 1364; or Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6973.

32. Compliance with this Consent Decree shall in no way affect or limit the obligation of Aristech to comply with all current and future federal, state, and local laws, regulations, ordinances, court orders, and permit conditions, including the PSD regulations at 40 C.F.R. §§ 52.21 et. seq. The Plaintiff reserves its rights to pursue other remedies to which it is entitled, including, but not limited to, additional injunctive relief and civil penalties for Aristech's violations of this Consent Decree. Nothing in this Consent Decree shall prevent the Plaintiff from pursuing a contempt action against Aristech and requesting the Court to order specific performance of the terms

of the Decree. Nothing in this Paragraph shall affect the enforceability of the covenant not to sue in Paragraph ~~30~~ 28.

33. Election of Remedy. The Plaintiff will not seek both stipulated penalties and civil penalties for the same actions or occurrences as those constituting a violation of the Consent Decree.

34. This Consent Decree does not limit or affect the rights of any of the Parties against any third parties.

IX. FORCE MAJEURE

35. If any event occurs which causes or may cause a delay in the achievement of compliance with any requirement of this Consent Decree, the Defendant shall notify U.S. EPA in writing within twenty (20) days of when the Defendant knew, or with the exercise or reasonable care should have known, of the event. The notice shall refer to this section of the Consent Decree and describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by the Defendant to prevent or minimize the delay, and the timetable pursuant to which those measures shall be implemented and whether the Defendant believes that the event which causes or may cause the delay constitutes a force majeure. The Defendant shall adopt reasonable measures to avoid or minimize any such delay.

36. If the U.S. EPA agrees that the violation has been or will be caused solely by circumstances beyond the control of

the Defendant or any entity controlled by the Defendant, including its contractors, and the Defendant could not have foreseen or prevented such delay by exercise of due diligence, U.S. EPA shall extend the time for compliance with the particular requirement(s) affected by the force majeure by a period not exceeding the delay actually caused by the circumstances. Defendant shall not be liable for stipulated penalties for the period of any such delay. Such extension does not alter the schedule for any other part of this Consent Decree, except that U.S. EPA shall extend the time for performance of other tasks under this Consent Decree that U.S. EPA determines will necessarily be delayed as a result of the force majeure.

37. If U.S. EPA does not agree with the Defendant's claim of force majeure, the Defendant may invoke the Dispute Resolution procedures of this Consent Decree (Section X). In any Dispute Resolution proceeding, if the Court ultimately determines that the violation has been or will be caused solely by circumstances beyond the control of the Defendant or any entity controlled by the Defendant, including its contractors, and that the Defendant could not have foreseen and prevented such delay by exercise of due diligence, the Defendant shall be excused as to that violation and delay (including Stipulated Penalties (Section VI)), but only for the delay actually caused by such circumstances.

X. DISPUTE RESOLUTION

38. Subject to Paragraph 37 or unless otherwise expressly provided for in this Consent Decree, the Defendant shall have the right to dispute any decision of U.S. EPA under this Consent Decree, and the provisions of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

39. Any dispute that arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends written Notice of Dispute to the other party.

40. If the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by U.S. EPA shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiation period, the Defendant invokes the formal dispute resolution procedures of the Section by serving on U.S. EPA a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position, any supporting documentation

relied upon by the Defendant, and any action that the Defendant considers necessary to resolve the dispute.

41. An administrative record of the dispute shall be maintained by the U.S. EPA. The administrative record shall include the Statement of Position and all of the information provided by the Defendant pursuant to the preceding Paragraph, as well as any other documents relied upon by U.S. EPA in making its final decision pursuant to the next Paragraph.

42. If U.S. EPA concurs with the Defendant's position, U.S. EPA shall provide written notice of such concurrence to the Defendant. If U.S. EPA does not concur with the Defendant's position, U.S. EPA shall so notify the Defendant in writing, setting forth the basis for its decision. U.S. EPA's decision shall control unless, within fifteen (15) days after the receipt of U.S. EPA's written determination, the Defendant files a notice of judicial appeal that shall set forth a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. U.S. EPA may file a response to the notice of judicial appeal.

43. In any such judicial appeal, the Defendant shall have the burden of demonstrating that U.S. EPA's position is arbitrary and capricious or otherwise not in accordance with law. The Court shall base its decision on the administrative record.

The Court may grant relief, or may, upon motion of either party or on its own motion, remand the dispute for further consideration by U.S. EPA, including supplementation of the administrative record as appropriate.

44. The invocation of formal dispute resolution procedures under this Section shall not of itself extend nor postpone any of the Defendant's obligations under this Consent Decree, but the payment of stipulated penalties with respect to the disputed matter shall be stayed pending the resolution of the dispute.

XI. ACCESS

45. During the duration of this Consent Decree, U.S. EPA and/or state or local air pollution control agency inspectors or representatives and their authorized contractors and representatives may enter on, through and about the site of the Aristech facility subject to this Consent Decree at reasonable times, to take samples and to inspect and copy such records as may be necessary to determine compliance with the provisions of the Consent Decree. This right of access is in addition to and is not a limitation on the rights of access afforded by any statute, regulation or other law.

XII. FAILURE OF COMPLIANCE

46. The United States does not, by its consent to the entry of this Decree, warrant or aver in any manner that Aristech's complete compliance with this Decree will result in

compliance with the provisions of the Clean Air Act, 42 U.S.C. §§ 7401 et seq., or any of its construction and operating permits. Notwithstanding EPA's review and approval of any plans formulated pursuant to this Consent Decree, Aristech shall remain solely responsible for compliance with the terms of the Act, this Decree, and its construction and operating permits.

XIII. NON-WAIVER PROVISION

47. Subject to Paragraph 28, notwithstanding any other provision of this Consent Decree, nothing herein shall be construed to limit the right of the United States to seek or obtain any remedy, sanction or relief that may be available to it by virtue of the Defendant's failure to comply with this Consent Decree, the Clean Air Act or the PSD regulations, or the PSD permit issued for the 1986 Phenol expansion project.

XIV. RETENTION OF JURISDICTION

48. The Court shall retain jurisdiction to modify and enforce the provisions of this Consent Decree, to resolve disputes arising hereunder, and to entertain any application and issue any order as may be necessary or appropriate for the construction and effectuation of its terms. Any modification of this Consent Decree must be in writing and agreed to by the parties and approved by the Court.

XV. NOTICES, RECORDS, AND SUBMISSIONS

49. Except as otherwise provided herein, all notices, records and submissions required by this Consent Decree shall be in writing, shall be maintained by the Defendant for the duration

of the Consent Decree and shall be made available to U.S. EPA upon request.

50. Unless a change of address notice is timely submitted or this Consent Decree states otherwise, all notices and/or submissions in connection with this Consent Decree shall be addressed as follows:

For U.S. EPA:

Attn: Compliance Tracker
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Avenue, AE-17J
Chicago, Illinois 60604

Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Avenue, C-14J
Chicago, Illinois 60604

For DOJ:

Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
DOJ#: 90-5-2-1-06701/1

For Aristech:

David P. Novello
Law Offices of David Novello, LLC
1752 N Street, NW, Suite 800
Washington, DC 20036

Sunoco, Inc.
Ten Penn Center
1801 Market Street
Philadelphia, PA 19103-1699
Attn: General Counsel

XVI. DOCUMENT RETENTION

51. Aristech agrees that it shall preserve, during the pendency of this Consent Decree and for a minimum of one (1) year after its termination, at least one legible copy of all records and documents, including computer tapes and electronic files, in the possession, custody, or control of its divisions, employees, agents, accountants, contractors, and attorneys, that relate to the performance of Aristech's obligations under this Consent Decree and its PSD permit, including, but not limited to, documents embodying or relating to the results of any sampling, tests, or other data or information generated or acquired by Aristech or on Aristech's behalf.

XVII. PUBLIC COMMENT

52. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days, for public notice and comment in accordance with the provisions of 28 C.F.R.

§ 50.7. The United States reserves the right to withdraw or withhold its consent if the comments received disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. If the United States withdraws from this Consent Decree under this paragraph, this

Consent Decree shall be of no force or effect. This Consent Decree shall become effective upon entry by the Court.

53. Aristech consents to the entry of this Consent Decree without further notice. Aristech further agrees not to oppose entry of this Decree by this Court or to challenge any provision of this Decree unless the United States has notified Aristech in writing that it no longer supports entry of the Decree.

XVIII. COSTS AND FEES

54. Each party shall bear its own costs, fees and disbursements in this action.

XIX. SIGNATORIES

55. The undersigned representative of the Defendant certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally the party represented by him or her. The undersigned Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, also certifies that she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally the United States to this agreement.

XX. EFFECTIVE DATE

56. This Consent Decree shall become effective on the date of entry by the Court.

XXI. TERMINATION

57. At any time after one year from the entry of this Consent Decree, Aristech may notify the Plaintiff that it believes the Consent Decree should be terminated and it shall be terminated in accordance with this Paragraph if it can demonstrate that:

- a. Aristech has been issued a PSD permit for the Phenol Expansion Project;
- b. Aristech has achieved compliance with the provisions contained in the Consent Decree and PSD permit;
- c. Aristech has paid stipulated penalties due and owing to the United States and has paid the civil penalty pursuant to Section VI of the Consent Decree;
- d. Aristech has certified to the United States and the EPA its compliance with (a), (b) and (c), above; and
- e. U.S. EPA has not contested in writing Aristech's certification of compliance within 60 days of the Agency's receipt of such certification. If the Plaintiff agrees that the Decree should be terminated, both parties shall jointly petition the Court to terminate the Consent Decree. If EPA disputes Aristech's compliance, it shall provide Aristech with written notification stating the reasons why this Consent Decree should not be terminated, the Dispute

Resolution provisions of the Consent Decree shall be invoked and the Consent Decree shall remain in effect pending resolution of the dispute by the parties or the Court.

XXII. OTHER PROVISIONS

58. The United States shall be deemed a judgment creditor for purposes of collection of any penalties owed it by the Defendant under this Consent Decree.

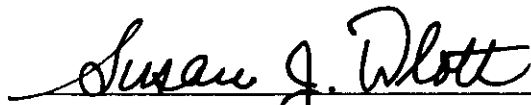
59. Nothing in this Consent Decree shall act as a bar, adjudication or resolution of any claims of the Plaintiff other than for the claims asserted in the Complaint and, in any subsequent proceeding concerning such claims, Defendant shall not assert any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in any subsequent proceeding were or should have been brought in the instant action.

60. Aristech hereby agrees to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons, and to accept service of the Complaint filed in this action by regular U.S. mail. Aristech agrees to waive any notice requirements of the Clean Air Act for any of the violations being resolved by this Consent Decree.

61. If the Defendant files a voluntary petition in bankruptcy, or is adjudicated bankrupt under the Bankruptcy Code of the United States, or is the subject of a petition in federal or state court for the appointment of a trustee or receiver in bankruptcy or insolvency, or makes a general assignment for the benefit of creditors, immediate notice shall be given to the Collections Unit of the U.S. Attorney's Office, Southern District of Ohio, 2 Nationwide Plaza, 280 N. High St., 4th Floor, Columbus, Ohio 43215, and to U.S. EPA ORC Region 5 at 77 West Jackson, Mailcode C-14J, Chicago, Illinois 60604. At the option of the United States, upon the occurrence of any of the above listed events, the full balance of all outstanding penalties owed by the Defendant, together with accrued interest, may be declared immediately due and payable.

62. This Consent Decree represents the entire agreement of the parties.

Entered this 14th day of February, 2002



United States District Court Judge
Southern District of Ohio

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States of America v. Aristech Chemical Corporation, Civil Action No. C-1-01-772.


FOR ARISTECH CHEMICAL CORPORATION

Date: 5/29/01



PEARL SASSER
Vice President, Manufacturing
Aristech Chemical Corporation
1019 Haverhill-Ohio Furnace Road
Haverhill, Ohio 45636
(740) 533-5333

Date: 6/1/01

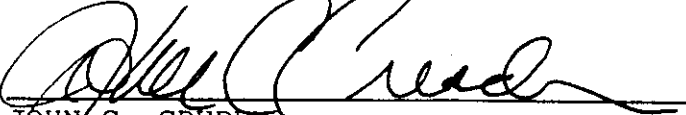


DAVID P. NOVELLO
Law Offices of David Novello, LLC
1752 N Street, NW, Suite 800
Washington, DC 20036
(202) 857-9708

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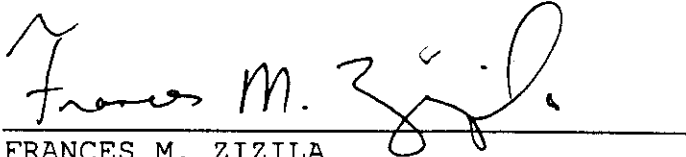
FOR THE UNITED STATES OF AMERICA

UNITED STATES DEPARTMENT OF JUSTICE



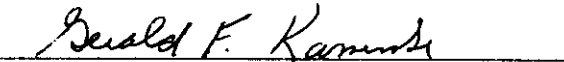
JOHN C. CRUDEN
Acting Assistant Attorney General
Environment & Natural Resources Division

Date: 10/25/01



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Indian Resources Section
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GREGORY G. LOCKHART
United States Attorney for the
Southern District of Ohio




GERALD F. KAMINSKI
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Assistant United States Attorney
221 East 4th Street, Suite 400
Cincinnati, Ohio 45202

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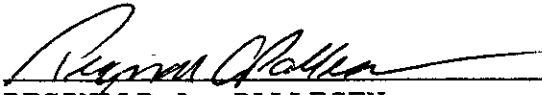
FOR THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

Date: 9.13.01



THOMAS V. SKINNER
Regional Administrator
U.S. Environmental Protection Agency -
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Date: 9-4-01



REGINALD A. PALLESEN
Associate Regional Counsel
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